



Comptroller General
of the United States

Washington, D.C. 20548

147158

Decision

Matter of: Wyoming Sawmills, Inc.

File: B-248331

Date: July 22, 1992

Alan I. Saltman, Esq., and Vincent S. Antonacci, Esq.,
Bogle & Gates, for the protester,
Rhea Daniels Moor, Esq., and Laurie Ann Ristino, Esq.,
Department of Agriculture, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Where the bid opening officer receives a hand-carried bid after declaring the arrival of the bid opening time and record fails to establish that bid opening officer extended bid opening deadline, the agency properly rejected the bid as late.

DECISION

Wyoming Sawmills protests the rejection of its bid as late under the Tongue Blowdown Salvage Timber Sale conducted by the Forest Service, Department of Agriculture. We deny the protest.

The Tongue Blowdown Salvage Timber Sale was a sealed bid/oral auction sale in which potential purchasers were required to submit a qualifying initial sealed bid (offering at least the minimum acceptable bid rate established by the Forest Service) in order to participate in the oral auction. The sale advertisement issued by the agency set bid opening for April 7, 1992, at 2 p.m.

Wyoming's representative arrived at the bid opening location at approximately 1:45 p.m. on April 7. At 1:55 p.m., as depicted on the wall clock in the front of the bid opening room, the bid opening officer (who was also the contracting officer for the sale) announced the "last call" for the submission of sealed bids. At 2 p.m., the bid opening officer began to announce the arrival of the scheduled bid opening time but he was interrupted by Wyoming's representative who requested that the officer answer some

questions regarding the timber sale contract. (The record shows that the officer's announcement was interrupted after he stated "[o]kay, it is now 2 o'clock.") Wyoming's representative did not request an extension of the scheduled 2 p.m. bid opening time. After confirming that Wyoming's representative believed the discussion could affect its bidding (the oral auction bidding was to commence immediately after bid opening), and that there were no objections from the other contractors present at bid opening, the officer answered Wyoming's questions. Subsequently, the bid opening officer, who paused slightly after confirming that no bidder had any additional questions, stated "[t]o continue, it is now 2:10 p.m., no further bids will be received or withdrawn for the Tongue Blowdown timber sale."

After the officer's "2:10 p.m." statement, which announcement was based upon the time shown on the bid opening officer's wristwatch, the officer turned his back to the audience to confirm the time stated on the wall clock in front of the bid opening room. The time according to that clock was 2:09 p.m. Immediately after the official's statement that the time for the submission of bids had passed, and while the official's back was turned to the audience, Wyoming's representative apparently submitted the firm's bid to the Forest Service clerk responsible for the receipt of bids. The clerk added Wyoming's bid to the box which contained the other bids received for the sale. A written notation on the outer envelope which contained Wyoming's bid indicated that the bid was received at "2:08 p.m." (There is no information in the record as to which clock was used to determine the time noted for the receipt of Wyoming's bid.)

The three sealed bids received (including Wyoming's) were opened and posted. The bid opening official then announced that the bidders could review the bids before the oral auction. At that time, one of the bidders verbally protested the agency's receipt of Wyoming's bid and argued that the protester's bid should be rejected as late since it was received after the published bid opening time of 2 p.m. After several brief recess sessions, the bid opening officer returned to the bid opening room and announced that Wyoming's bid was considered to have been submitted late and that the firm therefore could not participate in the oral auction. The oral auction was then held with the remaining two bidders. Wyoming filed a protest with our Office on April 13, 1992, challenging the determination that its bid was submitted late.

Wyoming alleges that the bid opening officer, by answering Wyoming's questions, effectively postponed the deadline for the submission of bids, but improperly failed to inform

bidders of a new deadline for the submission of bids, and thus did not give the protester enough time to submit its bid.

The bid opening officer must decide when the time set for opening bids has arrived and must inform those present of that decision. The bid opening officer's declaration of bid opening is determinative of lateness unless it is shown to be unreasonable under the circumstances. See Swinerton & Walberg Co., B-242077.3, Mar. 22, 1991, 91-1 CPD ¶ 318; Chattanooga Office Supply Co., B-228062, Sept. 3, 1987, 87-2 CPD ¶ 221.

Initially, the events surrounding bid opening are at issue since Wyoming's attorneys contend that the protester's representative asked the bid opening officer to answer his questions at 1:59 p.m. before the 2 p.m. bid opening time and that the representative submitted the firm's bid while the bid opening officer was still making his "2:10 p.m." declaration of the time. We make our findings based on the evidence in the record which includes detailed affidavits from the participants at bid opening including the contracting officer/bid opening official, other Forest Service personnel assisting in and observing the bid opening, and three contractors (two of which submitted bids) that attended bid opening.¹ Sworn affidavits in the record affirm that the bid opening officer warned bidders at 1:55 p.m. that the 2 p.m. deadline was imminent and that the officer soon after announced that it was 2 p.m. All of the affiants attest that Wyoming's bid was not submitted until after the 2 p.m. scheduled deadline. They unequivocally state that the bid was submitted after the bid opening officer's announcement that it was 2:10 p.m.


Even if we assume that the bid opening officer's declaration of bid opening occurred at approximately 2:10 p.m., rather than at 2 p.m., the record shows that Wyoming's bid was not submitted until after the bid opening officer announced that it was 2:10 p.m. and that "no further bids will be received." Thus, Wyoming's bid was late unless the bid opening officer effectively postponed the initial deadline and had an obligation to inform bidders of a new deadline and give them sufficient time to submit new bids.

We find that the bid opening officer did not postpone bid opening and that Wyoming should have had no legitimate expectation of the establishment of a new bid opening deadline. After the "last call" at 1:55 p.m., as stated

¹The protester's bid opening representative has not submitted an affidavit attesting to his allegations regarding the bid opening proceedings.

above, the bid opening officer began to announce bid opening. Wyoming did not request an extension of the bid opening time and therefore knew, or should have known, that the declaration of bid opening would occur, at the latest, after the colloquy. The bid opening officer did not state that an extension was granted and none of the other bidders understood that the bid opening officer was granting such an extension. (In fact, the bid opening officer believed that Wyoming had submitted its bid prior to the 2 p.m. deadline and that the questions pertained to the subsequent oral auction.) In short, we see nothing in the record to support the notion that bid opening had been extended. Accordingly, the protester's bid was properly rejected as late.

The protest is denied.


James F. Hinchman
General Counsel